

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.3741 OF 2007

Mahendra Eknath Mahimkar ...Petitioner

Versus

Harischandra Gajanan Mhashekar ...Respondent

Shri Sanjiv A. Sawant for the Petitioner.

Shri S.G.Karandikar for the Respondent.

**CORAM : ABHAY S.OKA, J.
DATED : JUNE 04, 2007.**

P.C.:

1. Heard Advocates appearing for the parties. The Petitioner in this Writ Petition under Article 227 of the Constitution of India is the original Plaintiff. A suit filed by the Plaintiff for declaration and injunction has been dismissed by the trial Court. In an Appeal preferred by the Petitioner, the Application for temporary injunction made by the Petitioner has been rejected by the order dated 27th April, 2007 which is impugned in this Petition.

2. After having heard advocates appearing for the parties, I find that no case is made out for interference. It is not in dispute that during the pendency of the suit filed in the year 2001, there was

no interim injunction operating in favour of the Petitioner. The case made out by the Petitioner in the trial Court was that he had become owner of the suit land by adverse possession. The trial Court has recorded a finding that the Petitioner has failed to prove that he was in possession of the suit land.

3. Considering the aforesaid facts, the Appellate Court was right in declining to grant discretionary relief of temporary injunction. Hence, Writ Petition is rejected.

4. It is made clear that all contentions of the parties on merits of the pending Appeal are expressly kept open. Appeal shall be disposed of by the Appellate Court as expeditiously as possible.

JUDGE